of circumstances of which he ought reasonably to have availed himself. *Roehm* v. *Horst,* 178 U. S. 1. The injured party is entitled to recover, first, the expenses necessarily and actually incurred in the unsuccessful attempt to operate the factory; and, second, the fair rental value of the idle factory, and, if it has no rental value, then the interest on the money invested in the same together with interest on any idle working capital the use of which had been lost by reason of the violation of the contract. *The Paola Gas Company* v. *The Paola Glass Company,* 56 Kan. 614, 44 Pac. 621. But the injured party is under a duty to use ordinary care and diligence to lighten the consequential damages resulting from the breach of the contract. *Aikin* v. *Perry,* 119 Ga. 263, 46 S. E. 93.

DAMAGES—FRIGHT PRODUCING MISCARRIAGE—TRESPASS.—Defendant's agent wrongfully entered the premises of plaintiff, a married woman, and by violent and abusive language to her nurse so frightened the plaintiff that a miscarriage resulted. *Held,* that plaintiff could recover damages for the miscarriage resulting from the fright and mental anguish caused by the trespass, though the defendant's agent did not know of the pregnancy of the plaintiff. *Bouillon* v. *Laclede Gas Light Co.* (1910), — Mo. —, 129 S. W. 401.

This is one of the cases among those in which fright without physical impact produces deleterious physical results. The miscarriage cases fall in the main in three categories: (1) Those in which only negligence in the defendant is charged; perhaps the leading case among those in the United States is *Mitchell* v. *Rochester R. R. Co.,* 151 N. Y. 107, 34 L. R. A. 781, in which no recovery was allowed for a miscarriage resulting from mere fright caused by negligence, the reason being given that it would open a wide field for fictitious claims to allow recovery for the consequences of fright alone. The House of Lords declined to establish a precedent allowing a claim for damages as the result of fright alone. *Victorian Rys. Com'rs.* v. *Coultas* L. R. 13 App. Cas. 222. (2) Those in which the miscarriage is caused by malicious or wanton action of defendant. *Kimberly* v. *Howland,* 143 N. C. 398, 7 L. R. A. (N. S.) 545, and (3) Those in which the action is accompanied by trespass and it is under this last class that the principal case falls. In Massachusetts no recovery can be had for visible illness resulting from mere fright caused by defendant's wrong; but if the wrong produce a slight physical impact the defendant becomes liable for the nervousness and ensuing hysteria without proof that the shock was caused by the blow. *Spade* v. *Lynn & Bost. R. R. Co.,* 168 Mass. 285; *Smith* v. *Postal Tel. & Cable Co.,* 174 Mass. 576. South Carolina takes the opposite view in holding that recovery may be had for physical injuries resulting from mere fright caused by negligence. *Mack* v. *South Bound R. R.,* 52 S. C. 323, 40 L. R. A. 679. In the principal case the court also considered the question of the responsibility of a corporation as principal for the malicious or wanton act of the agent but put it aside because of the evidence. But it has been held that in order to secure to the public better service from corporations and exemption from reckless and insolent servants, the wantonness of the servant may be imputed

to the corporation. *Goddard* v. *Grand Trunk Ry.*, 57 Me. 202, 2 Am. Rep. 39.

DEEDS—PRIVY EXAMINATION OF MARRIED WOMEN OVER TELEPHONE.—A married woman joined her husband in a deed of trust of her separate property for the purpose of securing a debt which her son owed to the defendant. After signing the deed, it was taken to the notary public who called Mrs. Wester, the grantor, over the telephone and attempted to take her privy examination in that manner. *Held,* a privy examination thus taken was ineffective under the statute. *Wester* v. *Hurt et al.* (1910), — Tenn. —, 130 S. W. 842.

Very few reported cases are to be found which involve acknowledgments or privy examinations taken over the telephone. It has been held that an acknowledgment of a married woman taken by the notary over the telephone did not of itself vitiate the deed, when the certificate was in due form and not impeached by fraud, duress or mistake. *Banning* v. *Banning,* 80 Cal. 271, 22 Pac. 210, 13 Am. St. Rep. 156; and in *Sullivan* v. *Bank,* 37 Tex. Civ. App. 228, 83 S. W. 421, it was held that the oath to an affidavit which the statute requires shall be administered to the affiant in the personal presence of the officer administering the oath cannot be administered by use of the telephone though the officer is familiar with the voice of the affiant; and in *Ex Parte Terrell* (Tex. Crim. App.) 95 S. W. 536 it was held that a statute requiring the reading of a subpoena in the hearing of a witness was not complied with by reading it over the telephone. These cases and the principal case seem to be correctly decided, and perhaps the reason for the scarcity of similar decisions is to be found in the fact that the officer's certificate is considered conclusive as to all matters except fraud. *Baldwin* v. *Snowden,* 11 Ohio St. 203; *Council Bluffs Sav. Bank* v. *Smith,* 59 Neb. 90, 80 N. W. 270.

ESTOPPEL—WHAT CONSTITUTES.—E., holding a beneficiary certificate issued by appellee, changed the beneficiary, naming appellant in place of one D. Upon E's death both appellant and D. claimed the money due on the certificate. Appellee wrote to appellant that it recognized her as the rightful beneficiary, but requested that she bring suit to dispose of the claim of D. and the appellee would interplead and pay the money into court. Suit was brought by appellant against appellee in which D. intervened and set up her claim. The appellee defended on the ground that the contract was ultra vires and void. *Held,* appellee was estopped to deny its liability. *Irwin* v. *Sovereign Camp of Woodmen of the World* (1910), — N. M. —, 110 Pac. 550.

It is well settled that if representations or admissions are made with the intention that a party shall act upon them, and that party, believing them to be true does act upon them, the party so making the representations or admissions will be estopped to deny them if the party, relying and acting thereon, would be prejudiced or injured by such denial. *Ensel* v. *Levy & Bro.,* 46 Ohio St. 255; *Meister* v. *Birney,* 24 Mich. 435; *Chesapeake &c Ry.* v. *Walker,* 100 Va. 69, 40 S .E. 633. The elements which must be present to